



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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In Reply Refer To:

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Decision Record (DR)

For

Wild Horse Emergency Gather Determination of NEPA Adequacy (DNA)

For the Southern Portion of the Pancake HMA

Egan Field Office

DOI-BLM-NV-L010-2012-0038-DNA

Introduction

Severe drought conditions in south central Nevada have resulted in emergency conditions within the southern portion of the Pancake Herd Management Area (HMA) that threatens wild horse health and well-being. Wild horses within the southern portion of the Pancake HMA range in Henneke body condition score (BCS) from very thin (BCS 2) to moderately thin (BCS 4). If a sufficient number of excess wild horses are not promptly removed from the area where drought conditions have rapidly become most severe, it is anticipated that individual wild horse body condition will continue to decline and that the most vulnerable horses – mares and foals in particular – will die.

In order to alleviate the competition for the limited forage and water resources during the extended drought conditions and prevent continued body condition decline and/or death of the most vulnerable horses, the Bureau of Land Management's (BLM) Egan Field Office proposes to conduct an emergency gather operation to gather and remove 100-125 excess wild horses from the southern portion of the Pancake HMA. We have determined that the situation in the southern portion of the Pancake HMA is in an emergency situation because the area is in a severe drought as indicated by the remaining water available to wild horses and the extremely limited amounts of forage that exists and these conditions threaten the health and welfare of the wild horses in the area. The situation is too extreme to be addressed through the normal gather cycle (BLM Handbook 4.7.2). We monitored the drought conditions throughout the summer as detailed below and in the drought conditions brief (prepared by the Egan Field Office in September 2012 and available on the BLM's website¹), but conditions have quickly worsened in the past two weeks into severe drought conditions and many horses are in low body condition such that any further delay would likely result in mortality of several horses. In keeping with BLM guidance for addressing emergencies from severe drought situations, we intend to ensure that a veterinarian is on call or onsite to address any concerns with animal health or welfare. See BLM Manual 4720.23. In observations made this summer during a drought tour of the portion of the Pancake HMA by an interdisciplinary team of BLM range specialists, key measures of habitat

¹ www.blm.gov/nv/st/en/fo/ely_field_office/blm_programs/wild_horses_and_burros/pancake_hma_wild_horse.html

condition such as forage vigor, leader growth of shrubs, current rainfall, and leaves of deciduous shrub were below average. Utilization data collected at key areas showed heavy to severe use attributed to wild horses (as noted below, none of the emergency areas were used for livestock grazing this year and some of the area has been closed to livestock grazing for several years). This summer, BLM installed wildlife cameras in the southern portion of the Pancake HMA that recorded steadily declining horse health and condition as well as declining forage health.

The little to no new growth of vegetation within this portion of the HMA is causing the horses to travel 5-10 miles from water to forage is taking a serious toll on wild horse health. Although some rainfall has occurred, the moisture has been insufficient to address the lack of forage. No action other than the gather and removal of those excess wild horses would be implemented during this gather operation.

The Pancake HMA is located in southwestern White Pine and Northeastern Nye Counties approximately 30 miles west of Ely, Nevada, and 80 miles northeast of Tonopah, Nevada. The Pancake HMA is approximately 855,000 acres in size with an AML range of 240-493 wild horses whereas the current estimated population is 1,206 wild horses (including the 2012 foal crop). This population estimate is nearly 3 times the high range of AML and 5 times the low range. Although horses were gathered in the winter of 2012, this gather did not appreciably reduce the number of horses on the Pancake HMA so that there were significant changes in forage utilization. The area of concern is within the southern portion of the Pancake HMA around Big Sand Springs Valley and the Ike Bench (eastside of the Pancake Range). An aerial direct count population inventory on August 28, 2012 observed 146 wild horses within the affected area of the Pancake HMA. The BLM has reviewed the determination made in its previous land use planning efforts and associated analysis, the analysis in the 2011 EA for the November 2011 Pancake Complex Gather Decision, as well all information currently available regarding range health and severe drought conditions, as discussed herein, resulting in severe shortages of water and available forage. The BLM therefore concludes that an overpopulation of wild horses currently exists on the public lands in the Pancake HMA and that action is necessary to remove these excess animals on an emergency basis in the southern portion of the Pancake HMA in order to maintain a thriving natural ecological balance on the range.

The BLM has determined that use of a helicopter gather in the southern portion of the Pancake HMA is the best method for conducting this emergency gather. Water trapping is sometimes an effective method for gathering wild horses, but is not suited to the current conditions for several reasons. First, water trapping takes a period of time up to several weeks for wild horses to adjust to the corrals and associated water or bait trapping activities. If the adjustment period is too long, it is likely that the area will experience significant horse mortality and many of the remaining horses will be too weak to gather and remove from the range. Second, given the remote location of the emergency area, water hauling is infeasible because trucks are unable to haul water into location or to drive trailers into the area.

A BLM interdisciplinary team has reviewed the Proposed Action for the Pancake HMA Wild Horse Emergency Gather Determination of NEPA Adequacy (DNA). A Determination of NEPA Adequacy confirms that an action is adequately analyzed in existing NEPA document(s) and is in conformance with the land use plan (H-1790-1-National Environmental Policy Act (NEPA) BLM Handbook). Based on this interdisciplinary team review, the Egan Field Manager has determined that the proposed action is substantially similar to the actions analyzed within the

Pancake Complex EA (DOI-BLM-NV-L010-2011-0023-EA) and found to have no significant impacts, thus an EIS is not required.

Decision

It is my decision to implement the Proposed Action as described in the Determination of NEPA Adequacy (DOI-BLM-NV-L010-2012-0038-DNA). This decision is effective immediately pursuant to 43 CFR 4770.3(c) and NHPA Section 106.

The Proposed Action is to conduct emergency gather operations to gather and remove 100-125 excess wild horses from the southern portion of the Pancake HMA, Nye County (See Map in Appendix I). A sufficient number of wild horses would be gathered due to the continuing decline in animals condition associated with on-going severe drought conditions which has resulted in minimal vegetation growth and reduced water supplies. BLM's monitoring of wild horse condition indicates that the body conditions of wild horses in the southern portion of the HMA based on the Henneke body condition scoring system (BCS) are generally very thin (BCS 2) to moderately thin (BCS 4). Wild horses at BCS 2 are at risk of death if they remain on the range given the current drought conditions. Given the weak state of the horses in the southern portion of the Pancake HMA, a veterinarian will be onsite at the temporary holding facility to provide recommendations regarding care, treatment, and, if necessary, euthanasia. [per BLM Manual 4720.23] The BLM Euthanasia Policy is outlined in WO-IM-2009-041 and is used as a guide to determine if animals meet the criteria and should be euthanized.

No population control measures would be implemented during this gather operation, which would be limited to removal of a targeted number of excess horses only.

Rationale

The Proposed Action is in conformance with the Ely District Record of Decision and Approved Resource Management Plan signed in August 2008. Section B of the DNA documents the conformance review. The Proposed action is consistent with all other federal, state, local, and tribal policies and plans to the maximum extent possible. The emergency removal of excess wild horses from the southern portion of the Pancake HMA will decrease competition for limited resources during severe drought conditions, thereby improving available habitat and water resources for the remaining wild horses and would alleviate large animal impact pressure on limited water sources.

Public Involvement

Due to the public's involvement in development of the Pancake Complex Gather EA, which analyzed several different gather alternatives, no additional public involvement is necessary for the Pancake HMA Wild Horse Emergency Gather Determination of NEPA Adequacy DOI-BLM-NV-L010-2012-0038-DNA. A public notification on the availability of this DNA was mailed to interested public and posted on the Ely District website, www.nv.blm.gov/ely on September 6, 2012.

BLM also consulted and coordinated with the Nevada Department of Wildlife during the development of the Proposed Action of the original EA document.

Authority

The authority for this Decision is contained in Section 1333(a) of the 1971 Free-Roaming Wild Horses and Burros Act, Section 302(b) of the Federal Land Policy and Management Act (FLPMA) of 1976, and Code of Federal Regulations (CFR) at 43 CFR §4700.

§4700.0-6 Policy

- (a) Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat;
- (b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans;
- (c) Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior;
- (d) In administering these regulations, the authorized officer shall consult with Federal and State wildlife agencies and all other affected interests, to involve them in planning for and management of wild horses and burros on the public lands.

§4710.4 Constraints on Management

Management of wild horses and burros shall be undertaken with the objective of limiting the animals' distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans.

§4720.1 Removal of excess animals from public lands

Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately ...

§4740.1 Use of Motor Vehicles or Air-Craft

- (a) Motor vehicles and aircraft may be used by the authorized officer in all phases of the administration of the Act, except that no motor vehicle or aircraft, other than helicopters, shall be used for the purpose of herding or chasing wild horses or burros for capture or destruction. All such use shall be conducted in a humane manner.
- (b) Before using helicopters or motor vehicles in the management of wild horses or burros, the authorized officer shall conduct a public hearing in the area where such use is to be made.

§4770.3 Administrative Remedies

- (a) Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal. Appeals and petitions for stay of a decision of the authorized officer must be filed within 30 days of receipt of the decision in accordance with 43 CFR part 4.
- (b) Notwithstanding the provisions of paragraph (a) of §4.21 of this title, the authorized officer may provide that decisions to remove wild horses or burros from public or

private lands in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving natural ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision.

APPROVAL

This decision is effective upon issuance in accordance with 43 C.F.R. § 4770.3 (c) because removal of excess wild horses is necessary to protect animal health and prevent further deterioration of rangeland resources. This decision may be appealed to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with provisions found at 43 CFR Part 4 (see attachment).

Sincerely,

A handwritten signature in blue ink that reads "Doris A. Metcalf". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Doris A. Metcalf
Acting Field Manager
Egan Field Office

FINDING OF NO SIGNIFICANT IMPACT (FONSI)
for
Wild Horse Emergency Gather Determination of NEPA Adequacy (DNA)
For the Southern Portion of the Pancake HMA
Egan Field Office
DOI-BLM-NV-L010-2011-0038-DNA

I have reviewed the Determination of NEPA Adequacy DOI-BLM-NV-L010-2012-0038-DNA, for the Pancake Herd Management Area Wild Horse Emergency Gather, dated September 7, 2012 and considered the environmental impacts in the applicable NEPA document (Pancake Complex Wild Horse Gather (DOI-BLM-NV-L010-2011-0023-EA). I have determined that the Proposed Action will not have a significant effect on the human environment. Therefore, the preparation of an environmental impact statement (EIS) is not required for compliance with the National Environmental Policy Act of 1969.

Reasons for this finding are based on my consideration of the Council on Environmental Quality (CEQ) criteria for significance (40 CFR 1508.27) with regard to the context and intensity of impacts.

Public Involvement: Consistent with IM 2010-130 due to an emergency situation public comment on the EA was not solicited. Public viewing will be made available at the temporary holding corral and trap site locations. There will be limited opportunities for the public and media to be escorted by BLM to the gather site location for observation and viewing.

Context: The affected region is limited to the southern portion of the Pancake Complex Herd Management Areas in Nye Counties (Nevada), where the project area is located.

Intensity: Based on my review of the EA against CEQ's factors for intensity, there is no evidence that the impacts are significant:

1. *Impacts that may be both beneficial and adverse.* The proposed gather would be consistent with the Ely District Approved Resource Management Plan (RMP August 2008) and the standards for rangeland health, and would maintain a thriving natural ecological balance and multiple use relationship consistent with other resource needs as required under the Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA). Although the gather and removal of excess wild horses is expected to have some adverse short-term impacts on individual animals, including possible heat stress to weaker horses and temporary disruption to horses remaining on the HMA, these adverse impacts are expected to be minor and will be further mitigated by standard operating procedures. The proposed gather will also have beneficial impacts—both in the short term and long term. In the short term, the gather will help prevent continued decline in wild horse body condition, and may prevent the starvation or death of horses in the poorest body condition. Over the long-term, the proposed gather over the long-term, it is expected to benefit wild horse health by reducing competition for limited forage and improving habitat conditions in the herd management areas and would be beneficial for rangeland resources such as vegetative communities, riparian resources, and wildlife habitat.

2. *The degree to which the proposed action affects public health or safety.* The Standard Gather Operating Procedures (EA, Appendix II and Appendix VII) would be used to conduct the gather

and are designed to ensure protection of human health and safety, as well as the health and safety of the wild horses and burros. The proposed action has no effect on public health or safety.

3. *Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.* The proposed action has no potential to affect unique characteristics such as historic or cultural resources or properties of concern to Native Americans. There are no wild and scenic rivers, or ecologically critical areas present in the areas. Maintenance of appropriate numbers of wild horses is expected to help make progress in meeting resource objectives for improved riparian, wetland, aquatic and terrestrial habitat.

4. *The degree to which the effects on the quality of the human environment are likely to be highly controversial.* Effects of the gather are well known and understood. Although commenters on the Pancake Complex EA raised concerns about BLM removing wild horses rather than reducing livestock grazing, those comments have limited relevance to the present action because the area of concern (the southern portion of Pancake HMA) has received very little livestock grazing in comparison to other lands within the Pancake Complex. Drought and overpopulation of wild horses are the primary contributors to poor horse body condition—not competition with livestock. The proposed action does not implicate highly controversial issues.

5. *The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.* Possible effects on the human environment are not highly uncertain and do not involve unique or unknown risks. The Proposed Action has no known effects on the human environment which are considered highly uncertain or involve unique or unknown risks. This is demonstrated through the effects analysis in the EA.

6. *The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.* The action is compatible with future consideration of actions required to improve wild horse management in conjunction with meeting objectives for wildlife habitat within the herd management area. The Proposed Action does not set a precedent for future actions. Future actions would be subject to evaluation through the appropriate level of NEPA documentation

7. *Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.* The proposed action is not related to other actions with individually insignificant but cumulatively significant impacts.


8. *The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing on the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historic resources.* The proposed gather has no potential to adversely affect significant scientific, cultural, or historical resources.

9. *The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.* The proposed action is not likely to adversely affect any listed species, and the action area does not include any habitat determined to be critical under the Endangered Species Act.

10. *Whether the action threatens a violation of Federal, State, local or tribal law or requirements imposed for the protection of the environment.* The Proposed Action is in

compliance with the 2008 Ely District Record of Decision and the Approved Resource Management Plan dated August 2008 and is consistent with other Federal, State, local and tribal requirements for protection of the environment to the maximum extent possible.


Doris A. Metcalf
Acting Field Manager
Egan Field Office


Date

Attachment
Wild Horse Gather Plan DNA (DNA)
For the Pancake HMA Gather Plan
Decision Record

Appeal Procedures

If you wish to appeal this decision, it may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with 43 CFR part 4. If you appeal, your appeal must **also** be filed with the Bureau of Land Management at the following address:

Doris Metcalf, Acting Egan Field Manager
BLM, Ely Field Office
HC 33 Box 33500
702 N. Industrial Way
Ely, NV 89301

Your appeal must be filed within thirty (30) days from receipt or issuance of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4942, January 19, 1993) for a stay (suspension) of the decision during the time that your appeal is being reviewed by the Board, the petition for stay must accompany your notice of appeal. Copies of the notice of appeal and petition for a stay must also be submitted to:

Board of Land Appeals
Dockets Attorney
801 N. Quincy Street, Suite 300
Arlington, VA 22203

A copy must also be sent to the appropriate office of the Solicitor at the same time the original documents are filed with the above office.

US Department of the Interior
Office of the Regional Solicitor
Pacific Southwest Region
2800 Cottage Way, Room E-1712
Sacramento, California 95825

If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. A petition for a stay is required to show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellants success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted.
4. Whether the public interest favors granting the stay.

The Office of Hearings and Appeals regulations do not provide for electronic filing of appeals, therefore they will not be accepted.